

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1487 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RASIKBHAI MANILAL SHAH

Versus

ASMITABEN HARSHADBHAI  
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Appearance:

MR SHITAL R PATEL for Petitioner

MR RS PANJWANI for Respondent No. 1  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/12/1999

ORAL JUDGEMENT

#. Rule. As Mr.Punjwani waives service of the rule on behalf of the respondents and with the consent of learned

counsel for the parties, the matter is taken up for final hearing.

#. Both the courts have granted the interim injunction in favour of the plaintiff-respondent. The orders of the courts below on the application filed by the plaintiff-respondent under Order 39 Rule 1 of the Code of Civil Procedure have been challenged in this revision application.

#. The learned counsel for the petitioner contended that the plaintiff-respondent has played trick and has made an attempt to abuse the process of the court. First he has constructed the wall just a day before filing of the suit and then filed the suit and has obtained the injunction. It has next been contended that the courts below have not considered this aspect of the matter and proceeded to decide the matter in favour of the plaintiff-respondent. Lastly it is contended that in case the interim injunction is granted by the court below is allowed to continue it will result in causing irreparable loss and injury to the defendant-petitioner.

#. The learned counsel for the plaintiff-respondent in contra submitted that the defendant-petitioner did not take any objection when the suit compound wall was erected. It has next been contended that this suit compound wall was erected by the original owner of the property and on the day of the suit it was in existence and the court below has not committed any error in protecting the same during the pendency of the suit. Carrying this contention further the learned counsel for the respondent submitted that in fact the defendant-petitioner is playing trick and making an attempt to abuse the process of the Court. He constructed the staircase after the compound wall in dispute has come into existence and, thereby claiming right over the margin land, which is covered under compound wall. Concluding his submission, the learned counsel for the plaintiff-respondent submitted that when both the courts have concurrently held it to be fit case for grant of temporary injunction and exercised its discretion in favour of the plaintiff-respondent this court may not interfere with the impugned order under Section 115 of the Code of Civil Procedure.

#. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

#. It is not in dispute that the compound wall was in existence on the day of the filing of the suit. It is a

matter of the trial whether it was constructed by the original owner of the suit property or by the plaintiff-respondent but the fact remains that it has been there in existence on the day of the suit. There is a concurrent finding of fact of the courts below on this point and which is not challenged by the defendant-petitioner. Otherwise also, I do not find any perversity in the finding of the facts recorded by both the courts below. Once this factual aspect has been accepted I fail to see how it can be said that the discretion exercised by the courts below in this case is perverse nor it can be said that the courts below have committed any material irregularity in exercise of their jurisdiction in passing of the impugned orders. The Appellate Court while hearing the appeal filed under Order 43 of the Code of Civil Procedure has very very limited power of judicial review in the discretion order passed by the Trial Court and the power of this court in such matters where the First Appellate Court has also affirmed the order of the Trial court is much more narrower.

#. The defendant-petitioner has not taken any objection when the suit compound wall was constructed. This compound wall which has been raised is not in the contravention of the by-laws of the Municipal Corporation. The explanation with which the defendant-petitioner has come up that he was sick when this compound wall was raised by the plaintiff-respondent is nothing but only a concocted and manufactured defence. The defendant-petitioner has failed to establish by producing any evidence for what period he was sick and as to when this construction of compound wall was carried out. However, as stated earlier even if we take that the compound wall was constructed just before the suit filed the fact remains that the wall is in existence on the date of filing of the suit and the courts below rightly protected the plaintiff-respondent in this case by grant of temporary injunction to which no exception can be taken.

In the result, this Civil Revision Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No orders as to costs.

(S.K.Keshote, J.)

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